80-1906

No. 80

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In the Supreme Court of the United States

OCTOBER TERM, 1980

ALLIED INTERNATIONAL, INC.,
CROSS-PETITIONER,

v.

INTERNATIONAL LONGSHOREMEN's ASSOCIATION, AFL-CIO, Local 799, INTERNATIONAL LONGSHOREMEN'S ASSOCIATES, AFL-CIO, and T. W. GLEASON, Individually and as he is President of International Longshoremen's Association, AFL-CIO and H. R. HASSELGREN, Individually and as he is Secretary-Treasurer of International Longshoremen's Association, AFL-CIO and N. J. BOWERS, Individually and as he is Executive Vice President of International Longshoremen's Association, AFL-CIO and F. R. FIELD, JR., Individually and as he is General Organizer of International Longshoremen's Association, AFL-CIO and A. SCOTTO, Individually and as he is Regional Director of International Longshoremen's Association, AFL-CIO and J.T. MOOCK, Individually and as he is First Vice President of International Longshoremen's Association, AFL-CIO and R. A. MASSEY, Individually and as he is Second Vice President of International Longshoremen's Association, AFL-CIO and G. W. DIXON, Individually and as he is Third Vice President of International Longshoremen's Association, AFL-CIO and W. P. LYNCH, Individually and as he is Fourth Vice President of International Longshoremen's Association, AFL-CIO
CROSS-RESPONDENTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

CROSS-PETITION FOR A WRIT OF CERTIORARI

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I

QUESTIONS PRESENTED FOR REVIEW

1. Whether a union's conduct in ordering its longshoremen members to refuse to handle cargo from a foreign nation because the union leadership objected to a foreign policy action of that nation constitutes an admiralty tort of interference with the existing and prospective contractual relations of an importer of goods from that nation damaged by the refusal?

2. Whether a union's conduct in ordering its members and locals to refuse to handle product from a foreign nation because the union leadership objected to a foreign policy action of that nation restrains foreign and interstate commerce in violation of the Sherman Act?

3. What kinds of relief are available to innocent third parties damaged when the leadership of a large International Union uses its federally granted monopoly-like powers to order its members to refuse to handle cargo from a foreign nation because of that leadership's objection to a foreign policy action of that nation?

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In the
Supreme Court of the United States

OCTOBER TERM, 1980

No.

ALLIED INTERNATIONAL, INC.,[1]
CROSS-PETITIONER,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION
AFL-CIO, et al.,
CROSS-RESPONDENTS.

On Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

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CROSS-PETITION FOR A WRIT OF CERTIORARI

Cross-Petitioner, Allied International, Inc. (Allied) respectfully prays that a writ of certiorari issue to review the opinion, order and judgment of the United States Court of Appeals for the First Circuit in this case in the event a writ of certiorari is issued at Respondents' request in Case No. 80-1663

[1] Allied International, Inc. has one subsidiary, Allied International Sales Corp. In addition the following are affiliated companies; Allied Plywood Co., Inc., Allied Plywood Inc., Allied Plywood Ltd., Atlas Management Corp., Harbor Corp., and B.R.S. Plywood Inc.

Opinions Below

The opinion of the court of appeals is not yet reported. It is reproduced herein as Appendix A. The opinion rendered by the district court is reported officially at 492 F. Supp. 334 (D. Mass. 1980).

Jurisdiction

The judgment of the court of appeals was entered on January 6, 1981. On April 9, 1981, Cross-Petitioner received the petition for writ of certiorari filed by Cross-Respondents, International Longshoremen's Association, AFL-CIO (ILA), Local 799, ILA, and their respective officers which has been docketed as Case No. 80-1663. Cross-Petitioner now files this cross-petition pursuant to Sup. Ct. R. 19.5 and invokes the Court's jurisdiction under 28 U.S.C. § 1254(1).

Statutes Involved

The relevant statutory provisions are as follows:

1. Section 8(b) of the National Labor Relations Act, 29 U.S.C. § 158(b), provides in pertinent part:

> It shall be an unfair labor practice for a labor organization or its agents —
>
> . . . .
>
> (4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in any industry affecting commerce, where in either case an object thereof is —
>
> . . . .

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, ... *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, .. any primary strike or primary picketing; ...

2. Section 303 of the Labor-Management Relations Act, 29 U.S.C. § 187, provides in pertinent part:

(a) It shall be unlawful, for the purpose of this section only, in an industry or activity affecting commerce, for any labor organization to engage in any activity or conduct defined as an unfair labor practice in section 158(b)(4) of this title.

(b) Whoever shall be injured in his business or property by reason of any violation of a subsection (a) of this section may sue therefor in any district court of the United States ... and shall recover the damages by him sustained and the cost of the suit.

3. Section 1 of the Sherman Act, 15 U.S.C. § 1, provides in pertinent part:

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal ...

4. Section (I) of 28 U.S.C. §1333 provides:

The district courts shall have original jurisdiction, exclusive of the courts of the states, of:

(1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

Statement of the Case

Cross-Petitioner, Allied, is an importer of Russian wood products, which has contracted with two agencies of the USSR for the purchase of birch hardwood and plywood. Allied has also contracted (through a third Soviet agency) with Waterman Steamship Co., (Waterman) for the shipment of these wood products to the United States from the USSR. Waterman employs John T. Clark & Son, (Clark) a stevedoring company, to unload its ships docking in Boston. Clark's source of longshoremen is a hiring hall, operated by defendants International Longshoremen's Association (ILA) and its Local 799 pursuant to a collective bargaining agreement between the unions and the Boston Shipping Association.

On January 9, 1980, one of Waterman's ships, the *Walton*, was in Boston unloading a portion of Allied's plywood and hardwood, prior to further unloading at other ports along the East Coast. On that date, defendant Thomas Gleason, President of the ILA, ordered ILA members to cease handling cargoes bound for or arriving from the Soviet Union, in protest of the invasion of Afghanistan by Soviet armed forces. In response to Allied's inquiries, Gleason informed Allied that ILA members would unload the *Walton's* cargo in Boston, but not at any other United States port. As a result, Waterman cancelled the *Walton's* scheduled calls, and unloaded all of Allied's wood products cargo in Boston, where it was stored, accruing demurrage and security charges. Waterman also restricted the cargo then being loaded into the Middleton in Leningrad to one-third its scheduled size, cancelled its delivery to scheduled United States ports, and unloaded the wood products in Montreal. In addition, Waterman repudiated its agreement to transport Allied's wood products aboard the Jefferson, which had not been loaded. ILA and Local 799 representatives informed Allied on March 12 and

March 25, 1980 that no ILA members would unload any cargo originating in the USSR.

On March 31, 1980 Allied filed a complaint in the district court alleging that the ILA's action violated (1) the National Labor Relations Act (NLRA) prohibition against secondary boycotts, section 8(b)(4), 29 U.S.C. § 158(b)(4), for which Allied has a private right of action under section 303 of the Labor Management Relations Act (LMRA), 29 U.S.C. § 187, and (2) the Sherman Act, 15 U.S.C. § 1, and (3) constituted tortious interference with Allied's business relationships, in violation of admiralty law. The action was consolidated with *Walsh* v. *ILA*, 488 F.Supp. 524 (D. Mass. 1980) in which the Regional Director of the NLRB sought a preliminary injunction against the ILA's Russian boycott. In a memorandum of June 17, 1980, the district court concluded that Allied had failed to state a cause of action on any of its three legal theories, and consequently dismissed the complaint.

On January 6, 1981, the U.S. Court of Appeals for the First Circuit reversed the dismissal of Allied's § 303 count and remanded for further consideration of Allied's prayer for damages and injunctive relief holding that the above described facts stated a violation of § 8(b)(4) of the National Labor Relations Act and therefore also § 303 of LMRA. The First Circuit affirmed the dismissal of Allied's Sherman Act claim holding that even though the ILA's conduct did not fall within the statutory exemption from the antitrust laws, it did not amount to an antitrust violation because it was limited to a refusal to work without a specific anticompetitive commercial object or any collaboration with non-labor groups. The First Circuit also noted that this conclusion was fortified, though not compelled, by its determination that the ILA's conduct amounted to a violation of § 303 of LMRA. Finally, the First Circuit dismissed Allied's admiralty tort claim on the ground that this claim was preempted by its determination that the same conduct gave rise to a § 303 violation. Senior Judge Aldrich filed a

concurring and dissenting opinion in which he concurred with the dismissal of the Sherman Act claim, but dissented with the disposition of the § 303 and admiralty tort claims. Judge Aldrich would have dismissed the § 303 claim on the ground that the conduct complained of was not within the LMRA definition of commerce as articulated in *American Radio Ass'n* v. *Mobile Steamship Ass'n*, 419 U.S. 215 (1974); *Windward Shipping* v. *American Radio Ass'n*, 415 U.S. 104 (1974), but he would have sustained the admiralty tort claim on the grounds that a dismissal of the § 303 claim eliminated any preemption issue, and that the conduct in question was an interference tort within the scope of § 766 of the *Restatement (Second) of Torts*.

Allied now seeks a writ of certiorari from this Court to review the First Circuit's dismissal of its admiralty tort and Sherman Act claims in the event that this Court grants the ILA's request in Case No. 80-1663 for review of the First Circuit's decision upholding Allied's § 303 claim.

Reasons for Granting the Writ

I. There Are Conflicts Between The Circuits On The Issues Raised By This Case In Addition To The Statutory Secondary Boycott[2] Issues Presented In The Petition For Certiorari. If Certiorari Is Granted, It Should Be Granted To Resolve Those Other Conflicts As Well

Three United States Courts of Appeals have now directly addressed at least some of the issues posed by this case, and each court has resolved the matter on a basis inconsistent with the other two courts. In 1964 a panel majority of the United

[2] The term "statutory secondary boycott" refers to conduct violating Section 8(b)(4) of the National Labor Relations Act, 29 U.S.C. §158(b)(4), and Section 303 of the Labor Management Relations Act of 1977, 29 U.S.C. §187.

States Court of Appeals for the Fourth Circuit in *NLRB* v. *ILA (Ocean Shipping)* 332 F.2d 992 reversed the NLRB and held that an ILA leadership ordered refusal to handle cargo based on that leadership's political differences with a foreign nation was not a statutory secondary boycott because the jurisdictional prerequisite of a "labor dispute" did not exist, and because, even if it did exist, the conduct was not secondary, and was probably protected by the First Amendment to the U.S. Constitution. Judge Bryan, in a succinct dissent, stated, 332 F.2d at 999: ". . . the present controversy fits snugly in the design of the National Labor Relations Act, unequivocally putting jurisdiction of it in the Board. I think, too, its decision was imperatively required by the Act".

The next case decided was *Baldovin* v. *ILA*, 626 F2d 445 (5th Cir. 1980), which arose out of the same ILA Russian boycott giving rise to the instant case. In *Baldovin* the Fifth Circuit, contrary to the Fourth Circuit in *Ocean Shipping*, specifically found that the ILA's conduct was secondary within the meaning and purposes of the Act. *Baldovin, supra*, 626 F.2d at 449. However, the Fifth Circuit held that the NLRB did not have jurisdiction of the matter because it was not in "commerce" within the meaning of *Windward Shipping* v. *American Radio Association*, 415 U.S. 104 (1974) and *American Radio Association* v. *Mobile Steamship Association*, 419 U.S. 215 (1974). Although, *Baldovin* did not reach the "labor dispute" and constitutional issues addressed by the Fourth Circuit in *Ocean Shipping*, in the companion case of *New Orleans Steamship Association* v. *General Longshore Workers*, 626 F2d 455 (5th Cir. 1980), *cert. granted sub nom. Jacksonville Bulk Terminals* v. *ILA*, No. 80-1045, 49 U.S. Law Week 3725 (March 30, 1981), the Fifth Circuit, contrary to *Ocean Shipping*, found that the boycott was a "labor dispute", and that it had no constitutional protection. *New Orleans Steamship Association, supra*, 626 F.2d at 462-67.

Finally, in the instant case of *Allied International* v. *ILA*, No. 80-1425 (1st Cir. Jan 6, 1981), a majority panel of the court below picked up where Judge Bryan in his *Ocean Shipping* dissent had left off some seventeen years earlier. In a thoroughly researched and articulated opinion, the majority held that the ILA's conduct was a statutory secondary boycott (App. A at A-21.), warranted no constitutional protection (App. at A-20-21), and was not a "labor dispute" within the meaning of the Norris-LaGuardia Act (App. A. at A-17-19). The majority dismissed Allied's tort claim on the ground that it was preempted by the success of Allied's statutory secondary boycott claim (App. A. at A-25-26).[3] Senior Judge Aldrich, concurring and dissenting, would have dismissed the statutory secondary boycott claim for essentially the reasons given by the Fifth Circuit in *Baldovin* (App. A at A-29). However, he would have sustained Allied's tort claim, noting:

> "... a labor organization's secondary activity in pursuit of a political goal in no way related to the labor interests of its members may be thought doubly objectionable .... The ILA has sought ultimately to involve itself in the affairs of a foreign nation — a matter in my opinion, better entrusted to the State Department than to labor unions" (App. A. at A-31-32).

Judge Aldrich also found no merit in the ILA's claims of Constitutional rights (App. A. at A-32).

The preceding means that a resolution by this Court of only the statutory secondary boycott issue will not necessarily resolve all conflicting issues. If this Court adopts the implication of the *Ocean Shipping* majority that the instant case is not a statutory secondary boycott because the First Amendment absolutely protects a union's top leadership in the exercise of its monopoly-like powers to force that leadership's political and

[3] There was no tort claim before the courts in either *Ocean Shipping*, *supra*, or *Baldovin*, *supra*.

foreign policy views on the rest of society,[4] it would seem that all other issues would disappear. If, on the other hand, this Court agrees with the majority of the court below that this ILA conduct is a statutory secondary boycott, then further issues of whether it can also be a tort and/or a violation of the Sherman Act would still be unresolved. But, particularly if this Court were to agree with the Fifth Circuit in *Baldovin* that this ILA conduct is not a statutory secondary boycott for lack of statutory jurisdicition, then there would still remain the pressing question of whether it was a tort and/or violation of the Sherman Act. The rationale of the majority in *Ocean Shipping* that this kind of conduct is protected would then still conflict with Judge Aldrich's rationale below that it is a tort, and the *Ocean Shipping* majority's reasoning that the conduct was a primary strike would still conflict with the reasoning of the majority below, and with the Fifth Circuit in *Baldovin*, that is was secondary which latter reasoning would render it actionable as a tort.[5]

In sum, no useful purpose would be served by this Court granting certiorari only with respect to the statutory secondary boycott issues, but denying it with respect to the other inexorably intertwined issues. Especially if this Court were to reverse the court below on the ground that there was no statutory jurisdiction for the reasons advanced by the Fifth Circuit in *Baldovin*, and by Judge Aldrich below, the reason

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[4] It should be noted that after days of hearing in three separate cases in Boston, Savannah, and Houston, a National Labor Relations Board Administrative Law Judge concluded that non-union help could not be obtained in the face of the ILA leadership's boycott, and that there was "little support" for the claim that the boycott represented the overwhelming desires of the membership (ILA certiorari Petition in No. 80-1663 pp. 45a-47a).

[5] The Fifth Circuit's *Baldovin* opinion contains nothing to lead one to believe that the Fifth Circuit would not find the conduct tortious were the claim to be presented to it, and the strong views expressed by the majority of the court below with respect to the "potential danger of uncontrolled whimsical activity" (App. A. at A-19) strongly indicate that it would find the conduct tortious were it not a statutory secondary boycott.

for the failure of the majority below to find the conduct alleged to be tortious would have then vanished, and the tort issue would thus become central.

II. This Case Raises Issues Other Than The Statutory Secondary Boycott Issues Which Are Of Such National Importance That They Should Also Be Resolved If Certiorari Is Granted.

This case and *Jacksonville Bulk Terminals* v. *ILA*, *supra*, wherein this Court has already granted certiorari, together pose all of the main issues that to date have been presented to courts below arising out of union refusals to handle a product for political or foreign policy reasons. It is submitted that no useful purpose would be served by limiting a grant of certiorari in this case to only the statutory secondary boycott issues presented by it while leaving the tort and anti-trust issues unresolved continuing the extant uncertainty. Indeed, this Court's ability fully to understand the scope and significance of the statutory secondary boycott issues may well be enhanced if there is also full briefing and arguing of the other related issues. Since all of these issues arise out of the same relatively simple Record, considering all of these issues together would involve little extra expenditure of Court time and effort.

Fundamentally, this case arises out of the fact that over the years federal legislation has granted unions extensive and unique monopoly-like rights not accorded business, political, social, or other kinds of associations or organizations. These rights include rights to represent, and in some cases to be paid dues by, individuals who do not desire such representation, or wish to pay such dues, rights to bargain with employers who do not wish to bargain, and certain immunities from anti-trust laws that foster national or major regional multi-employer collective bargaining. These rights are the foundation of the

power that is today exercised on a national or major regional basis by the ILA and other large and wealthy International unions including the rights and powers to disrupt commerce and injure innocent third parties through strikes and other work stoppages. American history clearly establishes that these rights and powers were uniquely granted unions so that they could improve the wages, hours, and working conditions of American workers, and thus ultimately benefit not only those workers, but society as a whole. There is not the slightest evidence to indicate that these rights and powers were granted to unions because labor union leaders possessed such unique disinterest or expertise in political or foreign policy matters that the national interest would be advanced by union ordered strikes and stoppages over political and foreign policy matters.

Accordingly, this instant case poses the question of what kinds of relief should be available to innocent third parties damaged by a union's, and especially a union leadership's, misuse of their extensive rights and powers to further personal parochial political or foreign policy beliefs. Allied submits that one kind of relief is that provided by the statutory secondary boycott provisions in the National Labor Relations Act and the Labor Management Relations Act of 1947. Since these provisions were designed specifically to cope with the problems of disruptions to commerce arising out of union strikes for objects remote from the traditional primary objects of striking the employees of the employer to obtain better wages, hours, or working conditions from that employer, logic suggests that these provisions should apply. The opinion of the majority of the Court below spells out the detailed reasons why these provisions should apply.

This ILA conduct is also tortious. In his separate opinion below, Judge Aldrich correctly states the reasons in support of that conclusion (App. A at A-30-32). As described at 12-13, *supra*, there is no question but that this tort issue would become central if this Court were to hold that the ILA's

conduct was not a statutory secondary boycott because it was not within the jurisdiction of the National Labor Relations Act.

Allied submits, however, that its tort claim is cognizable even though the conduct also violates the National Labor Relations Act, and that the majority of the court below was in error when it held that its determination that the conduct was a statutory secondary boycott precluded its consideration of the tort issue. In *Farmer* v. *Carpenters Local* 25, 430 U.S. 290, 297 (1977) this Court stressed that a critical inquiry in resolving pre-emption questions is whether "... in virtually all instances it is safe to presume that judicial supervision will not disservice the interests promoted by the federal labor statutes". Allied sees no way in which any interest protected by the federal labor statutes could be disserviced by concurrent admiralty jurisdiction of this case. A critical distinction in this regard between the instant case and cases such as *Local 20, Teamsters Union* v. *Morton*, 377 U.S. 252 (1964) is that the union conduct involved here, a strike over a foreign policy action of a foreign nation not connected with any traditional labor concern, cannot possibly be conduct protected by Section 7 of the National Labor Relations Act. See *Firestone Steel Products Co.*, 244 NLRB No. 148, *enforced sub nom. Local 174, UAW* v. *NLRB*, 90 L.C. (CCH) ¶12, 602 (D.C. Cir. 1981). Thus, there is no risk of judicial interference with conduct that might be protected. On the other hand the interests in comity and prevention of interference with international trade are deeply rooted concerns of admiralty jurisdiction. There is nothing inherently inconsistent with the injunction and damage remedies available via statutory secondary boycott and those available in admiralty. These remedies should be combined so that a strength of one in any given respect can help supplement a weakness of the other.[9] Then,

[9] For example, statutory secondary boycott law now has the weakness that in the case of a nationwide boycott, an adverse finding by one federal district

the vital national interest in protecting U.S. foreign policy and international trade against disruptions resulting from union leaders, vigilante style, acting out their personal political prejudices, is better secured. Finally, this is not the usual preemption situation where state law is involved. Here "... where there is an independent federal remedy that is consistent with the NLRA, the parties may have a choice of federal remedies" *Connell Construction Co.* v. *Plumbers Local No. 100*, 421 U.S. 616, 635-636 n. 17 (1975).

To most fully deter union leaders from engaging in the unwarranted intrusion into foreign policy and international trade as occurred in the instant case, there should also be Sherman Act liability. A majority of this Court has already squarely held that a given course of conduct can be both a statutory secondary boycott and a violation of the Sherman Act. *Connell Construction Co.* v. *Plumbers Local No. 100, supra.* Just as in *National Society of Professional Engineers* v. *United States*, 435 U.S. 679 (1978), the instant case involves an order from a national organization to its membership which order directly restrained trade, and had a substantial anti-competitive effect. The court below recognized that the ILA's conduct did not fall within the statutory "labor exemption" from the antitrust laws because it did not "... relate to a 'legitimate union interest' as that term has been defined in American labor history and law ..." (App. A at A-21-22). However, it still concluded that the antitrust laws should not apply because of the political nature of the object, and the ILA's labor union

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court is *res judicata* as to all other federal district courts — even though the damaged parties are different. See *Walsh* v. *ILA* 630 F.2d 864 (1st Cir. 1980) However, the fact that in statutory secondary boycott cases, the NLRB is the party seeking the injunction can also be advantageous. If a damaged party has limited resources, NLRB prosecution holds down its legal costs, and in cases involving factual disputes, district court judges are probably more likely to grant an injunction when an impartial government agency has first investigated the facts, and has satisfied itself that they may reflect illegal conduct.

status. With respect to the latter, it relied particularly on *Hunt* v. *Crumboch*, 325 U.S. 821 (1944). However, *Hunt* v. *Crumboch* was a case where a union refused to let its members work for an employer because one of the employer's partners had allegedly killed a union member during an earlier organizational strike. Certainly, a union's right to strike an employer because of its belief (even if it is wrong)[7] that the employer had engaged in illegal tactics against it is very much of a traditional union interest. It bears no relationship to a work stoppage for political or foreign policy reasons.

With respect to the element that the ILA's object was political or foreign policy rather than commercial, it is important that this Court affirm that a political or foreign policy object is no *per se* defense to antitrust liability. As our nation's once vaunted economy falters under the stress of foreign competition, the "positive value" of "competition based on efficiency" *Connell Construction Co.* v. *Plumbers Local No. 100, supra*, 421 U.S. at 623, deserves greater attention. It also becomes increasingly threatened as more so-called "single issue constituencies" develop and, among other things, increasingly resort to restraints on commerce in an effort to achieve their political ends. *See, e.g., Missouri* v. *National Organization for Women*, 620 F.2d 1301 (8th Cir. 1980), *cert. denied*, 101 S.Ct. 122; *Crown Central Petroleum Corp.* v. *Waldman*, 486 F. Supp. 759 (N.D. Pa. 1980), *rev'd on other grounds*, 634 F.2d 127 (3d Cir. 1980); *Osborn* v. *The Pennsylvania-Delaware Service Dealers Assoc.*, 499 F. Supp. 553 (D. Del. 1980). Particularly where an entity is the beneficiary of federally granted monopoly-like powers that have given it the ability, in practice, to substantially exclude products from markets at its whim and fancy, any such exclusion for a political or any other reason beyond the scope and purpose of its federal monopoly grant, should be a *per se* Sherman Act violation. The usual First Amendment considerations that

[7] See *Flynn Paving Co.*, 236 NLRB 721 (1978).

protect political activity and political protest simply do not apply to such a raw and *ultra vires* assertion of monopoly power.

Conclusion

For the foregoing reasons, Petitioner prays that a writ of certiorari be issued to review those aspects of the judgment and decision of the United States Court of Appeals for the First Circuit in this case adverse to Petitioner in the event a writ of certiorari is issued at Respondents' request in Case No. 80-1663.

Respectfully submitted,

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